

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Petition to Establish Procedural)	
Requirements to Govern)	WC Docket No. 07-267
Proceedings for Forbearance Under)	
Section 10 of the Communications)	
Act of 1934, as Amended)	

COMMENTS OF THE PUBLIC UTILITY COMMISSION OF TEXAS

The Public Utility Commission of Texas (Texas P.U.C.), having regulatory authority over public utilities within Texas, respectfully submits these comments in response to the *Notice of Proposed Rulemaking (NPRM)* issued by the Federal Communications Commission (Commission) in the above-captioned proceeding.¹ As discussed in the *NPRM*, the Commission seeks comment on the Petition filed by Covad Communications Group, NuVox Communications, XO Communications, LLC, Cavalier Telephone Corp., and McLeod USA Telecommunications Services, Inc. (Petitioners) regarding the adoption of procedural rules to govern the Commission's consideration of petitions for forbearance under the Federal Telecommunications Act (FTA).²

I. State Participation in Forbearance Proceedings

The Commission requests comments on steps it should take to facilitate the participation of state commissions, as well as other parties, in forbearance

¹ *In the matter of Petition to Establish Procedural Requirements to Govern Proceedings for Forbearance Under Section 10 of the Communications Act of 1934, as Amended*, WC Docket No. 07-267, Notice of Proposed Rulemaking, FCC 07-202 (rel. November 30, 2007) (*NPRM*).

² Communications Act of 1934 as Amended by the Telecommunications Act of 1996, 47 U.S.C. A. §§ 151 *et. seq.* (West 2001 & Supp. 2006) (FTA).

proceedings.³ The Commission also seeks comments on the Petitioners' proposal to adopt a rule inviting states to report to the Commission on the potential effects of Sections 251 and 271 forbearance in their states.⁴

To determine if forbearance is consistent with the public interest, the Commission must consider whether such forbearance will promote competitive market conditions. Many states have been in the forefront of promoting local telecommunications competition and can be an excellent source of information. This is especially true in the context of forbearance proceedings relating to Sections 251, 252 and 271 of the FTA. The Texas P.U.C. continues to conduct arbitrations and resolve post-interconnection agreement disputes regarding various provisions of Section 251 that are instrumental in promoting and nurturing a competitive telecommunications market. As a result of these proceedings, the Texas P.U.C., and other state regulatory authorities, are familiar with issues that affect telecommunications competition, including issues that could impact interstate competition. The state commissions also gain experience in crafting the appropriate remedies necessary to promote and maintain competitive market conditions. Accordingly, the Texas P.U.C. agrees that the Commission should facilitate state commission participation in forbearance proceedings by inviting states to comment, and provide relevant information, on the potential effects of forbearance on intrastate telecommunications markets.

To facilitate state commission participation, the Commission's rules should require that, on the date the petition is filed, the petitioner shall give written notice to the state commission of each state that may be affected by the petition. State commissions would then be given a reasonable opportunity to submit written comments to the Commission before the Commission takes final action on the petition. Additionally, the rules should specifically recognize the right of a state commission to intervene and participate in the proceeding to review the petition.

Regarding forbearance proceedings relating to Section 271 of the FTA, the Commission should allow state commissions to participate in order to ensure

³ *NPRM* at ¶ 9.

compliance with state regulatory requirements. For example, Texas statutes impose a code of conduct on telecommunications carriers.⁵ The purpose of the code is to ensure that telecommunications carriers “operate ... consistent with minimum standards to provide customers with competitive choices.”⁶ The code obligates telecommunications providers to, among other things, not unreasonably discriminate against other providers, interconnect with other carrier’s networks, provide number portability, negotiate in good faith, provide dialing parity to competing providers, and provide access to rights-of-way. These provisions apply unless preempted by Federal law, rule, regulation, or Commission order.

The Texas P.U.C. believes that state participation in Section 271 forbearance proceedings will help ensure that any relief granted is not premature, that state public interest protections are met, and that carriers are required to comply with their obligations.

II. Confidential Information

The Commission seeks comment on the Petitioners’ request that the Commission adopt particular rules addressing the scope and interpretation of protective orders in forbearance proceedings.⁷ It also seeks comments regarding the submission of, access to, and use of documents and information covered by protective orders in forbearance proceedings.⁸

The Texas P.U.C. does not object to the adoption of a standard protective order subject to appropriate protections for all parties involved. The Texas P.U.C. also acknowledges that state commissions may have information relevant to forbearance proceedings. For instance, the Texas P.U.C. maintains information relating to telecommunications industry revenues and market share on a state-wide basis, but not at the wire center level. However, in a recent proceeding the Texas P.U.C. staff declined to provide third-party confidential information in response to a

⁴ *Id.* at ¶10.

⁵ Public Utility Regulatory Act (PURA), TEX. UTIL. CODE ANN. §§ 60.201 – 60.210 (Vernon 2007).

⁶ *Id.* § 60.201.

⁷ *NPRM* at ¶8.

⁸ *Id.*

discovery request. In that docket, the Administrative Law Judge (ALJ) held that the Texas P.U.C.'s regulatory role would be undermined if it could not guarantee that confidential information provided in a proceeding would be kept secret; and, as a representative of the public interest, it has a responsibility, to protect confidential information provided in a proceeding.⁹ For that reason, the Texas P.U.C. cannot release confidential information or documents provided by a party to a proceeding and covered by protective orders without that party's authorization. Further, it is the practice of the Texas P.U.C. to maintain the confidentiality of information received from third parties that such parties claim are confidential unless and until ordered to do otherwise by the Texas Attorney General or a court of competent jurisdiction. This practice is consistent with the treatment of third party information required under the Texas Public Information Act.¹⁰

Accordingly, any protective order adopted by the Commission should recognize the responsibility of the Texas P.U.C., and other state regulatory authorities, to maintain the confidentiality of information that they have acquired through exercise of their regulatory duties. The Commission protective order should not be allowed to become a tool for a party to fish through competitively sensitive information collected by state commissions. If the information is necessary for a particular Commission proceeding, it should be obtained from the proprietor of the information, not from a state commission.

⁹ "... [T]he Commission's regulatory role that gives it certain prerogatives, and which would be undermined if it could not guarantee that confidential information provided in a proceeding or project would be kept secret. Without that guarantee, its ability to set reasonable rates that benefit the public would be compromised. Staff as a representative of the public interest has a responsibility, appropriate to the exercise of its regulatory authority, to protect confidential information provided in a proceeding." *Application of McLeodUSA Telecommunications Services, Inc. for Approval of Intrastate Switched Access Rates*, Order No. 9 Denying Motion to Compel Discovery, P.U.C. Docket No. 33545, p. 8 (Apr. 24, 2007).

¹⁰ See Public Information Act § 552.110(2005) which states in part that a "trade secret obtained from a person and privileged or confidential by statute or judicial decision is excepted [from disclosure]." Where a third party's property interests are involved, the government body must decline to provide the information unless disclosure is required by an Attorney General opinion or a decision of a court or administrative body. Public Information Act §552.305 (2005).

III. Conclusion

In closing, the Texas P.U.C. appreciates the opportunity to provide comments to the Commission. It urges the Commission to facilitate the participation of state commissions in forbearance proceedings in general, and in Sections 251 and 271 proceedings in particular. It also requests that the Commission refrain from requiring state commissions to submit, or provide access to, confidential information or documents in their possession as a part of such proceedings.

Respectfully submitted,

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March 7, 2008

_____/s/_____
Barry T. Smitherman
Chairman

_____/s/_____
Julie Parsley
Commissioner

_____/s/_____
Paul Hudson
Commissioner